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UNITED STATES OF AMERICA,)
)
 PLAINTIFF,) CASE NO. 3:12CR00768-LAB
)
 VS.)
)
 VIRGINIA MADRID,) SAN DIEGO, CALIFORNIA
) SEPTEMBER 17, 2012
) 9:30 A.M.
)
 DEFENDANT.)
)

SENTENCE WITH PSR

FOR THE GOVERNMENT: LAURA E. DUFFY, U.S. ATTORNEY
BY: TARA K. MCGRATH, ESQ.
ASSISTANT U.S. ATTORNEY
880 FRONT STREET
SAN DIEGO, CA 92101

COURT REPORTER: EVA OEMICK
TEL: (619) 615-3103

1 SAN DIEGO, CALIFORNIA - MONDAY, SEPTEMBER 17, 2012, 9:30 A.M.

2 THE CLERK: NO. 6, 12CR00768, UNITED STATES OF
3 AMERICA VERSUS VIRGINIA MADRID.

4 COUNSEL, PLEASE STATE YOUR APPEARANCES FOR THE
5 RECORD.

6 MS. FERRARA: GOOD MORNING, YOUR HONOR.

7 JAMI FERRARA ON BEHALF OF MS. MADRID.

8 MS. MCGRATH: GOOD MORNING, YOUR HONOR.

9 TARA MCGRATH ON BEHALF OF THE UNITED STATES.

10 THE COURT: MS. MCGRATH, WE HAVE SOME FILINGS HERE,
11 AND I HAVEN'T SIGNED OFF ON ANY OF THIS. LET ME TELL YOU WHAT
12 MY POLICY IS WHICH TRACKS THE NINTH CIRCUIT LAW.

13 A MOTION FOR THE DOWNWARD DEPARTURE MUST BE PUBLICLY
14 FILED. PERIOD. I AM NOT GOING TO FILE A MOTION FOR DOWNWARD
15 DEPARTURE UNDER SEAL.

16 LIKEWISE, A SENTENCING SUMMARY CHART WITH THE
17 GOVERNMENT'S RECOMMENDATION MUST BE PUBLICLY FILED. I AM NOT
18 GOING TO FILE IT UNDER SEAL. I AM NOT GOING TO ACCEPT ONE
19 THAT DOESN'T INCLUDE THE GOVERNMENT'S RECOMMENDATION.

20 NOW, IF THERE ARE REASONS THAT YOU THINK ARE
21 CONFIDENTIAL SUPPORTING THE MOTION FOR DOWNWARD DEPARTURE, YOU
22 MAY FILE A REQUEST TO HAVE THAT SEALED. BUT THE MOTION ITSELF
23 AND THE GOVERNMENT'S RECOMMENDATION ARE MATTERS OF PUBLIC
24 RECORD. SO I HAVE THOSE HERE. I RETURN THE FILINGS TO YOU
25 BECAUSE THERE WAS A BLANK SPOT IN THAT SENTENCING SUMMARY

1 CHART AS TO THE GOVERNMENT'S RECOMMENDATION.

2 MS. MCGRATH: YOUR HONOR, I HAVE MY PUBLICLY FILED
3 SENTENCING SUMMARY CHART WITH MY RECOMMENDATION IN THAT
4 PUBLICLY FILED 5K. I DID --

5 THE COURT: DOES IT HAVE THE NUMBER ON IT? BECAUSE
6 I GOT A COUPLE OF ITERATIONS TO THIS AND CAME BACK AND FORTH,
7 AND MY JUDICIAL ASSISTANT SAID NOW IT'S MISSING THE
8 GOVERNMENT'S RECOMMENDATION. AT ONE POINT THERE WAS A REQUEST
9 TO SEAL THE SUPPLEMENTAL MOTION FOR DOWNWARD DEPARTURE. THE
10 MOTIONS THEMSELVES I AM NOT GOING TO SEAL.

11 MS. MCGRATH: I HAVE DONE THIS BEFORE YOUR HONOR
12 SEVERAL TIMES. I DID IT THIS WAY. I DID IT THIS TIME THE
13 EXACT WAY I HAVE DONE IN THE PAST, YOUR HONOR. I HAVE DONE
14 WITH THE COURT'S INSTRUCTION TO BE FILED IN THE PUBLIC RECORD.
15 SO ON THE 13TH OF THIS MONTH I FILED THE 5K MOTION ON THE
16 PUBLIC RECORD. IT IS DOCUMENT NUMBER 35. AND THEN ON THE
17 10TH BEFORE THAT, I FILED A SENTENCING SUMMARY CHART, DOCUMENT
18 NUMBER 34.

19 THE COURT: LET ME RETURN THESE TO YOU THEN, BECAUSE
20 I HAVE ONE SAYING "UNITED STATES MOTION TO SEAL ITS
21 SUPPLEMENTAL MOTION FOR DOWNWARD DEPARTURE." I WOULDN'T SIGN
22 THAT.

23 AND THEN HERE IS ANOTHER ONE "SUPPLEMENTAL MOTION
24 FOR DOWNWARD DEPARTURE REQUEST TO SEAL." I WOULDN'T SIGN THAT
25 EITHER.

1 MS. MCGRATH: YOUR HONOR, THIS IS THE MOTION THAT
2 CONTAINS THE INFORMATION THAT CANNOT GO IN THE PUBLIC RECORD.

3 THE COURT: THAT'S THE DECLARATION, THEN?

4 MS. MCGRATH: YES, YOUR HONOR. AND THIS IS WHAT I
5 PROVIDED TO THE COURT.

6 THE COURT: MAYBE THE CONFUSION WAS HOW IT WAS
7 DENOMINATED AS A MOTION RATHER THAN THE DECLARATION IN SUPPORT
8 OF THE MOTION. I'LL SEAL THE DECLARATIONS WHEN THERE IS GOOD
9 CAUSE SHOWN, BUT NOT THE MOTION ITSELF.

10 MS. MCGRATH: SO AT THIS POINT THE UNITED STATES
11 CAN'T GO FORWARD UNLESS THE COURT CAN CONSIDER THE INFORMATION
12 CONTAINED THERE.

13 THE COURT: I LOOKED AT IT. I HAVE READ ALL OF IT.
14 I AM WILLING TO CONSIDER IT. IT'S JUST THE PUBLIC RECORD HAS
15 TO CONTAIN AN ACKNOWLEDGEMENT THAT THE GOVERNMENT HAS ASKED
16 FOR REDUCTION OF SENTENCE AND WHAT THE GOVERNMENT'S
17 RECOMMENDATION IS. AND WITH THOSE THINGS, LIKE I SAID, THE
18 REASONS FOR IT.

19 I UNDERSTAND SOMETIMES THERE ARE REASONS WHY YOU
20 WOULDN'T WANT TO DISCLOSE, WHY YOU ARE MAKING THE REQUEST.
21 AND IF GOOD CAUSE IS SHOWN, I'LL SEAL THOSE. BUT I HAVE READ
22 THEM. I JUST THINK THAT THEY ARE NOT CORRECTLY DENOMINATED
23 BECAUSE THEY TALK ABOUT A MOTION FOR 5K, A SUPPLEMENTAL MOTION
24 FOR 5K, NOT A DECLARATION.

25 MS. MCGRATH: IF I MAY, YOUR HONOR, JUST TO CLARIFY

1 FOR THE COURT, THIS IS THE EXACT SAME MANNER I HAVE DONE IT IN
2 THE PAST. I WILL CERTAINLY GO FORWARD DOING IT DIFFERENTLY
3 BASED ON THE COURT'S INSTRUCTION TODAY, BUT I DO WANT TO MAKE
4 SURE I AM CLEAR THAT THE COURT WANTS THIS TO BE CALLED A
5 DECLARATION.

6 THE COURT: YES, I WANT IT TO BE CALLED A
7 DECLARATION, AND THAT'S WHAT I'LL SEAL, BUT THE MOTION ITSELF,
8 I THINK, NEEDS TO BE PUBLICLY FILED. IT DOESN'T MAKE ANY
9 SENSE, BECAUSE YOU HAVE GOT TO COME IN AND ADVOCATE THE
10 SENTENCE HERE IN OPEN COURT. IT'S NOT A SECRET. WE DON'T
11 GIVE THE SONIC SIGNS TO EACH OTHER AS TO WHAT THE SENTENCE
12 WILL BE SO NOBODY KNOWS. THERE IS NO REASON THOSE DOCUMENTS
13 SHOULD NOT BE FILED PUBLICLY. I THINK THEY SHOULD BE. I
14 THINK THEY ARE REQUIRED TO BE.

15 BUT I HAVE READ THE SUBSTANCE OF IT, AND FRANKLY, I
16 AM PREPARED TO FOLLOW THE RECOMMENDATION OF THE UNITED STATES
17 INSOFAR AS THE DEPARTURE IS CONCERNED.

18 SO I HAVE READ HER DOCUMENTS, EVEN THOUGH THERE WAS
19 A PROBLEM WITH HOW THEY WERE TITLED AND I HAVE ACCEPTED THEM
20 FOR FILING.

21 I HAVE THE MOTION, THE SUPPLEMENTAL MOTION. I HAVE
22 YOUR SENTENCING MEMORANDUM. I HAVE READ THE PRESENTENCE
23 REPORT.

24 HAVE YOU GONE OVER THIS WITH YOUR CLIENT?

25 MS. FERRARA: I HAVE, YOUR HONOR.

1 THE COURT: AND THEN BOTH SIDES HAVE FILED
2 SENTENCING SUMMARY CHARTS.

3 IS THERE ANYTHING ELSE, MS. FERRARA, THAT I SHOULD
4 HAVE LOOKED AT?

5 MS. FERRARA: NO, YOUR HONOR. I THINK THAT YOU HAVE
6 REVIEWED EVERYTHING THAT WE WANTED YOU TO REVIEW. I DO HAVE
7 SOME ARGUMENTS I'D LIKE TO MAKE.

8 THE COURT: OF COURSE, AND I'LL HEAR FROM YOU, BUT I
9 WANT TO GET SOME OF THE TECHNICAL ASPECTS OF THIS OUT OF THE
10 WAY FIRST.

11 IS THE AGREEMENT THAT THE STARTING OFFENSE LEVEL,
12 THE AMOUNT OF NARCOTICS INVOLVED, IS 38? THAT'S WHAT THE
13 SENTENCING SUMMARY CHARTS REFLECTED, ALTHOUGH THE PROBATION
14 REPORT SAYS 36. I CHECKED IN THE GUIDELINES. IT LOOKS LIKE
15 THE PARTIES' ESTIMATE WAS CORRECT: 169,000 KILOS.

16 MS. FERRARA: WE AGREE THAT IT'S A 38, YOUR HONOR.
17 THE PROBATION REPORT WAS PREPARED BEFORE THE DEA7 WAS
18 AVAILABLE.

19 THE COURT: THEN THAT LEADS TO ANOTHER PROBLEM,
20 BECAUSE THERE IS 8.4 KILOS OF METHAMPHETAMINE. THIS IS A
21 BORDER CROSSING CASE. THERE IS A PLUS TWO FOR IMPORTING
22 METHAMPHETAMINE WHICH PROBATION PICKS UP AND IS IGNORED IN THE
23 SENTENCE CALCULATIONS OF THE PARTIES.

24 MS. FERRARA: IT'S NOT IGNORED IN MY CALCULATIONS,
25 BECAUSE I AM ASKING FOR MINOR ROLE, YOUR HONOR. I UNDERSTAND

1 THAT YOUR HONOR MAY NOT AGREE WITH THAT.

2 THE COURT: WE CAN TALK ABOUT THAT, BUT I HAVE TO
3 GET THE UPWARD ADJUSTMENTS FIRST.

4 MS. MCGRATH, WHY WAS THAT OMITTED HERE? SHE HAD 8.4
5 KILOS OF METHAMPHETAMINE AND IT'S A CROSSING CASE, AND THE
6 GUIDELINES SAY THAT IF YOU IMPORT METHAMPHETAMINE, IT'S A PLUS
7 TWO.

8 MS. MCGRATH: THAT'S CORRECT, YOUR HONOR. AS PART
9 OF OUR PLEA AGREEMENT WE AGREED TO EMPLOY THAT PLUS TWO, AND
10 IN THAT CASE INVOLVED THE FACTS AND I DID NOT RECOMMEND IT.

11 THE COURT: I DON'T UNDERSTAND. WHAT DO YOU MEAN?

12 MS. MCGRATH: YOUR HONOR, I CHOSE NOT TO RECOMMEND
13 THAT PLUS TWO APPLY BECAUSE I HAD A VERY DIFFICULT TIME WITH
14 HER CASE IN TERMS OF WHETHER OR NOT TO RECOMMEND MINOR ROLE
15 FOR HER. AND SO, FRANKLY, YOUR HONOR --

16 THE COURT: I AM NOT SURE THAT YOU CAN DO THAT.
17 THAT'S LIKE SAYING I CHOSE TO START AT 35 RATHER THAN 38. I
18 HAVE IGNORED PROVISIONS OF THE GUIDELINES THAT ARE SUPPOSED TO
19 APPLY.

20 MS. MCGRATH: IN SOME OF OUR PLEA AGREEMENTS, YOUR
21 HONOR, WE DON'T AGREE TO EMPLOY THAT PLUS TWO IF MINOR ROLE IS
22 NOT GIVEN.

23 THE COURT: I DON'T THINK IT'S A DISCRETIONARY ONE,
24 THOUGH. I THINK IT'S THE PROPER CALCULATION OF THE
25 GUIDELINES. AS I SAID, IT'S TO ME FUNDAMENTAL. IT'S NO

1 DIFFERENT THAN SAYING, WELL, ARBITRARILY I AM GOING TO START
2 AT A 33 RATHER THAN AT 38 ON THIS. YOU BELIEVE YOU HAVE
3 DISCRETION?

4 MS. MCGRATH: YOUR HONOR, I DO BELIEVE WE HAVE
5 DISCRETION AT THE PLEA AGREEMENT STAGE. AT THIS POINT IN
6 LIGHT OF ALL OF HER -- ALL THE INFORMATION INVOLVED IN THIS
7 CASE AT THE TIME THAT I FILED THE SENTENCING RECOMMENDATION
8 AND BECAUSE OF THE FACTS INVOLVED WITH THE MINOR ROLE
9 RECOMMENDATION, I DECIDED TO GO FORWARD ON JUST THE 38.

10 THE COURT: LET ME MAKE CLEAR WHAT MY FINDING IS ON
11 THIS. I AM NOT NECESSARILY DISAGREEING WITH THE BOTTOM LINE
12 HERE ON THE RECOMMENDATION, BUT I DON'T THINK IT'S A PROPER
13 WAY OF CALCULATING THE GUIDELINES AND SAY WE ARE GOING TO
14 IGNORE A PROVISION THAT OTHERWISE APPLIES. PROBATION HAS THAT
15 RIGHT. SO I THINK THE PLUS TWO APPLIES, AND STARTING OFFENSE
16 LEVEL IS 40. WHEREVER WE GO FROM THERE IS ANOTHER QUESTION.
17 BUT I THINK THE STARTING OFFENSE LEVEL IS 40.

18 YOU DISAGREE WITH THAT?

19 MS. FERRARA: I DISAGREE WITH THAT, BECAUSE I THINK
20 SHE QUALIFIES FOR MINOR ROLE. YOU SHOULDN'T APPLY THE PLUS
21 TWO, BUT WHETHER OR NOT THE GOVERNMENT HAS THE DISCRETION TO
22 OMIT THAT, I'D RATHER NOT TAKE A POSITION ON IT. I UNDERSTAND
23 WHAT YOUR HONOR IS SAYING, AND I UNDERSTAND WHAT THE
24 GOVERNMENT IS SAYING.

25 THE COURT: WELL, YOU DON'T DISAGREE THAT THE

1 STARTING OFFENSE LEVEL IS WHAT IT IS. THAT DOESN'T AFFECT
2 YOUR ABILITY TO ASK FOR DOWNWARD ADJUSTMENTS FROM THE STARTING
3 OFFENSE LEVEL. BUT WE FIGURE WHATEVER THE STARTING OFFENSE
4 LEVEL IS FIRST, AND THEN I TURN TO THE DOWNWARD ADJUSTMENTS
5 AND DEPARTURES TO GET TO A FINAL GUIDELINES RANGE; RIGHT?

6 MS. FERRARA: THAT'S CORRECT.

7 THE COURT: SO I FIND IT'S 40. I THINK THE
8 PROBATION REPORT WAS WRONG IN SAYING IT'S 36. IT IS ACTUALLY
9 38. I FIND THAT THE PLUS TWO DOES APPLY BECAUSE OF
10 METHAMPHETAMINE.

11 NOW, I AM HAPPY TO HEAR FROM YOU WHY YOU BELIEVE IT
12 IS A MINOR ROLE.

13 MS. FERRARA: YOUR HONOR, MS. MADRID WAS INVOLVED IN
14 THIS CASE AS SOMEONE WHO WAS HIRED TO CROSS METHAMPHETAMINE,
15 IN THIS CASE COCAINE, ACROSS THE BORDER. AS IN THE MEETINGS
16 WHICH THE GOVERNMENT FACT CAME OUT SUPPORTING THAT SHE WAS
17 APPROACHED BY OTHER PEOPLE; SHE HAD NO FINANCIAL INTEREST IN
18 IT WHATSOEVER. THE GOVERNMENT WAS ABLE TO CONFIRM ALMOST
19 EVERYTHING THAT MS. MADRID PROVIDED TO THE GOVERNMENT. AND
20 SHE -- AND THE GOVERNMENT WAS ABLE TO ASCERTAIN WHO SOME OF
21 THE OTHER ACTORS IN THIS CASE WERE AND WAS ABLE TO MAKE AN
22 ARREST BASED ON THAT INFORMATION.

23 THE COURT: ISN'T THAT ALL PART OF THE REASON FOR
24 THE 5K?

25 MS. FERRARA: IT IS, BUT I THINK IT DOES SUPPORT THE

1 FACT THAT SHE IS A MINOR PARTICIPANT UNDER THE CASE LAW. AND
2 I UNDERSTAND -- I THINK SOMETIMES I UNDERSTAND YOUR POSITION
3 AS TO WHAT IS MINOR ROLE IS AND WHAT ISN'T MINOR ROLE, AND
4 JUST BY VIRTUE OF CROSSING THE BORDER THAT THAT IS NOT IN YOUR
5 MIND A MINOR ROLE.

6 THE COURT: NO, THAT'S NOT MY POSITION. MY POSITION
7 IS THAT IT ISN'T INEXORABLY A MINOR ROLE JUST BECAUSE YOU ARE
8 DRIVING A CAR AND YOU ARE A SO-CALLED COURIER. I THINK IF
9 THAT WAS THE CASE, WE'D HAVE A LESSER INCLUDED OFFENSE THAT
10 SAID IMPORTING MARIJUANA WHILE A COURIER OR IMPORTING DRUGS
11 WHILE A COURIER.

12 THERE IS A MENTALITY HERE THAT WHILE I AM JUST
13 DRIVING THE CAR ACROSS, THEN I AUTOMATICALLY AM ENTITLED TO
14 MINOR ROLE. I DON'T SUBSCRIBE TO THAT MENTALITY. APPARENTLY,
15 THE NINTH CIRCUIT DOESN'T EITHER. THERE IS A PUBLISHED CASE
16 FAIRLY RECENT THAT SAYS NOT THE TALE OF THE TAPE OR A
17 CONSTELLATION OF FACTORS.

18 HERE, MS. FERRARA, WHAT'S TROUBLING TO ME IS THAT
19 SHE ADMITTED THAT SHE HAS DONE IT ON SIX PRIOR OCCASIONS. I
20 HAVE A VERY DIFFICULT TIME RECONCILING HOW SOMEONE WHO HAS
21 REPEATEDLY SMUGGLED DRUGS INTO THE UNITED STATES CAN BE SAID
22 TO HAVE A MINOR ROLE. WHAT WAS THE PERIOD OF TIME OVER WHICH
23 SHE WAS SMUGGLING ON THESE SIX PRIOR OCCASIONS?

24 MS. FERRARA: OVER APPROXIMATELY A SIX-MONTH PERIOD,
25 YOUR HONOR.

1 THE COURT: SEE, THERE IS CURRENCY. SHE IS TRUSTED
2 BY THIS ORGANIZATION. SHE IS BACK AND FORTH. THE LEGAL
3 STANDARD HERE IS MEANINGFUL. I HAVE TO FIND BY A
4 PREPONDERANCE OF EVIDENCE THAT SHE IS SIGNIFICANTLY LESS
5 CULPABLE THAN THE AVERAGE PARTICIPANT. IT'S BEEN USEFUL FOR
6 ME IN THE PAST TO TRY TO UNDERSTAND EXACTLY WHAT THAT MEANS TO
7 ENVISION A SCALE OF CULPABILITY LIKE THE LADDER, AND AT THE
8 TOP ARE THE PEOPLE THAT OWN THE DRUGS AND CALLING THE SHOTS,
9 AND I GET THAT. SHE IS NOT AT THE TOP. I UNDERSTAND THAT.

10 BUT UNFORTUNATELY FOR HER, THAT'S NOT THE
11 ARTICULATION OF THE STANDARD. THE STANDARD SAYS SIGNIFICANTLY
12 LESS CULPABLE THAN THE AVERAGE PARTICIPANT WHICH, USING MY
13 LADDER ANALOGY WITH WHETHER IT'S SOMEWHERE IN THE MIDDLE IF
14 YOU ARE AN AVERAGE PARTICIPANT. AND SHE HAS GOT TO BE
15 SIGNIFICANTLY LESS CULPABLE THAN THAT. TO MY WAY OF THINKING
16 WOULD PUT HER NEAR THE BOTTOM OF THE LADDER.

17 I DON'T KNOW HOW IT CAN BE SAID SOMEBODY WHO
18 SMUGGLES DRUGS ON MULTIPLE OCCASIONS OVER SIX MONTHS AND IS
19 SMUGGLING CURRENCY CAN BE NEAR THE BOTTOM OF THE LADDER IN THE
20 ORGANIZATION. I JUST DON'T BELIEVE THAT. I DON'T THINK IT'S
21 RATIONAL.

22 MS. FERRARA: YOUR HONOR, THE CURRENCY WAS JUST A
23 STATEMENT THAT SHE MADE. THAT WAS HER INITIAL STATEMENT AT
24 THE TIME OF HER ARREST WHEN SHE WAS DENYING KNOWLEDGE.

25 THE COURT: WAS IT EXCLUSIVELY DRUGS?

1 MS. FERRARA: IT WAS EXCLUSIVELY DRUGS. AND I KNOW
2 THAT IS SOMETHING THAT DOESN'T NECESSARILY ADVANCE THE BALL IN
3 MY CASE.

4 WHAT I'D SAY ON BEHALF OF MS. MADRID IS SIX TIMES
5 OVER A PERIOD OF SIX MONTHS IS NOT A TRUSTED IMPORTANT MEMBER
6 OF A CARTEL MAKE. I MEAN, SHE IS SOMEONE WHO -- SURE, SHE
7 ADMITTED IT. SHE DID IT MORE THAN ONCE. SHE DID IT SIX
8 TIMES, BUT OVER A SIX-MONTH PERIOD. IF SHE WAS THAT GOOD AND
9 SHE WAS THAT IMPORTANT TO THIS ORGANIZATION, THEY WOULD HAVE
10 HAD HER CROSSING A LOT. THEY WOULD HAVE DOING HER A LOT MORE.
11 THEY WOULD HAVE HAD HER KNOWING A LOT.

12 THE COURT: I GUESS IT'S HOW WE REGARD THE QUANTITY
13 AND THE SUBSTANCE SHE HAD ON THIS OCCASION. I THINK IT IS
14 PRETTY SIGNIFICANT. SHE HAD ALMOST 20 POUNDS OF
15 METHAMPHETAMINE, ALMOST?

16 MS. FERRARA: YES, IT WAS SIGNIFICANT, YOUR HONOR.
17 I UNDERSTAND THAT.

18 THE COURT: AND FIVE KILOS -- 2.3 KILOS, OVER FIVE
19 POUNDS OF COCAINE. WHAT'S THE STREET VALUE OF THOSE TWO DRUGS
20 TOGETHER? HUNDREDS OF THOUSANDS OF DOLLARS?

21 SEE, I MAKE THE LOGICAL ASSUMPTION, MS. FERRARA,
22 THAT THIS IS PROBABLY NOT DIFFERENT FROM THE OTHER TRIPS THAT
23 SHE MADE; THAT THEY WERE PROBABLY GIVING HER A LIKE DRUG AND A
24 LIKE AMOUNT. MAYBE NOT, BUT LOGICAL TO ASSUME THAT.

25 I TAKE YOUR POINT IF THIS IS A SINGLE POUND OF

1 MARIJUANA AND IT WAS LIKE A TEST OR SOMETHING. I JUST -- I
2 DON'T SEE THAT. THIS HAS ALL THE EARMARKS OF SOMEBODY WHO IS
3 TRUSTED BY THE ORGANIZATION. THEY ARE GIVING HER HUNDREDS OF
4 THOUSANDS OF DOLLARS WORTH OF PRODUCT, AND SHE IS CROSSING IT
5 MULTIPLE TIMES. IT BENDS THE WORD "MINOR" TO SAY HER
6 PARTICIPATION WAS MINOR. IT JUST DOES. IT IS NOT A FAIR
7 CHARACTERIZATION OF THE OFFENSE. IF THERE IS SOMETHING I
8 MISSED IN THIS OR THERE IS SOME OTHER FACTS YOU WANT ME TO
9 CONSIDER, BUT I JUST DON'T SEE IT.

10 NOW, AGAIN, THE GOVERNMENT HAS ASKED FOR A DIFFERENT
11 TYPE OF RELIEF. I AM PREPARED TO GRANT THAT RELIEF, BUT I
12 DON'T SEE THIS AS A MINOR ROLE CASE. I JUST DON'T.

13 MS. FERRARA: I AM WILLING TO SUBMIT, YOUR HONOR. I
14 MEAN, IT'S AN ARGUMENT THAT I AM COMPELLED TO MAKE, I DO
15 BELIEVE, AND I UNDERSTAND YOUR POSITION.

16 THE COURT: ON THIS CASE, WITH ALL RESPECT TO THE
17 POSITION, THE GOVERNMENT HASN'T RECOMMENDED MINOR ROLE IN THIS
18 CASE EITHER; RIGHT?

19 MS. MCGRATH: NO, YOUR HONOR, WE DIDN'T.

20 THE COURT: I DON'T FIND IT HERE. I AM HAPPY TO
21 HEAR FROM YOU GENERALLY. SHE IS NOT SAFETY-VALVE ELIGIBLE;
22 CORRECT? SHE IS IN CRIMINAL HISTORY CATEGORY II?

23 MS. MCGRATH: SHE IS NOT SAFETY-VALVE ELIGIBLE. NO,
24 YOUR HONOR.

25 THE COURT: AS I UNDERSTAND, SHE HAS GOT A PRIOR FOR

1 TRANSPORTING MARIJUANA IN 2007, PRIOR DRUG CASE INVOLVING THE
2 BORDER.

3 AS I UNDERSTAND THIS, MS. FERRARA, I AM PREPARED TO
4 GRANT THE GOVERNMENT'S MOTION FOR DOWNWARD DEPARTURE. HOW
5 MANY MONTHS DID YOU CONTEMPLATE IN YOUR MOTION?

6 MS. MCGRATH: YOUR HONOR, I BELIEVE IT WAS 43 IS
7 WHAT I ASKED FOR.

8 THE COURT: 43 MONTHS OFF. SO I AM PREPARED TO
9 GRANT THAT REDUCTION. THEN AS I UNDERSTAND IT, MS. FERRARA,
10 IN CASES LIKE THIS WHERE A PERSON IS NOT SAFETY-VALVE
11 ELIGIBLE, THE ONLY APPLICATION THAT THE 3553 FACTORS HAS AFTER
12 I GRANT A 5K FOR COOPERATION IS TO DETERMINE WHETHER THE
13 SENTENCE SHOULD GO BACK UP AS A RESULT OF AGGRAVATION, NOT
14 FARTHER DOWN. SO THAT'S HOW I THINK THE GUIDELINES WORK IN
15 THIS CASE. I AM HAPPY TO HEAR FROM YOU ABOUT THE ULTIMATE --
16 WHAT YOU THINK THE ULTIMATE SENTENCE SHOULD BE.

17 MS. FERRARA: THAT'S CORRECT. I PERSONALLY -- MY
18 REQUEST WOULD BE FOR YOU TO VALUE THE GOVERNMENT'S 5K MOTION
19 GREATER THAN WHAT THE GOVERNMENT HAS RECOMMENDED. IT IS A
20 GOOD RECOMMENDATION.

21 THE COURT: I DON'T WANT TO DO THAT. I DON'T WANT
22 TO STEP ON ANYBODY'S TOES. I HAVE AN EXPERIENCED PROSECUTOR
23 WHO SAT FACE TO FACE WITH THE DEFENDANT, HOW MANY TIMES?

24 MS. FERRARA: TWO.

25 THE COURT: AND SO SHE MAKES A JUDGMENT ABOUT WHAT

1 THE VALUE OF THE INFORMATION IS. NOW, I ACCEPT WHAT I HAVE
2 READ, WHAT SHE TELLS ME, AND HER EVALUATION SEEMS ALL
3 REASONABLE TO ME. IT WOULD BE, I THINK, VERY PRESUMPTUOUS OF
4 ME ABSENT SOME SHOCKING RECOMMENDATION LIKE ONLY A MONTH OFF
5 FOR THAT TO SAY, HEY, WAIT A MINUTE, I DISAGREE. I AM GOING
6 TO PUT MY IMPRIMATUR ON THIS. I DIDN'T SIT ACROSS FROM
7 MS. MADRID. I DON'T HAVE THE CONTEXT AND THE BACKGROUND TO
8 SAY THAT COULD BE USEFUL OR NOT SO USEFUL INFORMATION WE
9 ALREADY KNOW OR MAYBE THIS WILL LEAD TO OTHER ARRESTS OR HELP
10 US ERADICATE THE FLOW OF METHAMPHETAMINE INTO THE UNITED
11 STATES. SHE IS IN A PECULIAR SITUATION TO MAKE AN ASSESSMENT
12 TO EVALUATE ALL OF THAT.

13 SO I UNDERSTAND I HAVE DISCRETION TO DO IT, BUT THE
14 PROBLEM I AM HAVING IS JUST BECAUSE I DON'T LIKE THE LENGTH OF
15 THE SENTENCE, I AM NOT SUPPOSED TO VIEW IT ON THAT BASIS. I
16 AM SUPPOSED TO SAY THAT THIS INFORMATION WAS REALLY MORE
17 VALUABLE THAN THE GOVERNMENT IS GIVING IT CREDIT FOR BEING,
18 AND I DON'T HAVE THE BASIS FOR SAYING THAT HERE.

19 MS. FERRARA: CAN WE COME TO SIDEBAR AND OFFER A
20 LITTLE BIT MORE ABOUT --

21 THE COURT: WELL, OKAY, I'LL HEAR FROM YOU HERE.

22 (SIDEBAR CONFERENCE REPORTED)

23 THE COURT: I AM NOT TRYING TO GIVE YOU -- IT IS
24 VERY DIFFICULT FOR ME TO SAY, LOOK, THIS IS CHINTZY.

25 MS. FERRARA: I AM NOT SAYING MS. MCGRATH IS CHINTZY

1 AT ALL. ONE OF THE BASES OF THE FIRST MEETING, THEY WERE ABLE
2 TO IDENTIFY PEOPLE AND THEY BROUGHT IN SOME ARRESTS. AT THE
3 SECOND MEETING, MS. MADRID, SHE WAS ABLE TO IDENTIFY SOME OF
4 THE PEOPLE. THEY KNEW EXACTLY WHOM SHE IS TALKING ABOUT.
5 THEY WERE ABLE TO MAKE AN ARREST WITHIN THE NEXT COUPLE OF
6 DAYS.

7 THE COURT: IS SHE GOING TO BE EXPECTED TO TESTIFY?

8 MS. MCGRATH: IT IS POSSIBLE.

9 THE COURT: SO YOU CAN BRING A RULE 35.

10 MS. MCGRATH: I DON'T EXPECT HER TO BE TESTIFYING.
11 IT IS WITHIN THE REALM OF POSSIBILITY WHICH I MENTIONED.

12 THE COURT: SHE COULD FURTHER COOPERATE AND YOU
13 COULD BRING A RULE 35.

14 MS. MCGRATH: WHEN I WAS LOOKING AT THE VALUE HOW
15 YOU PERCEIVED THIS, I LOOKED AT IT INDEPENDENT OF THE ULTIMATE
16 SENTENCE KNOWING YOU WERE OFTEN KIND OF DISAGREEING WITH THE
17 CALCULATIONS. I WANTED TO CALCULATE THE AMOUNT OF TIME OFF
18 BASED ON WHATEVER STARTING POINT WE ARE AT.

19 THE COURT: IF YOU WANT TO CHANGE YOUR
20 RECOMMENDATION, THAT'S FINE. SHE IS, ACCORDING TO MY
21 CALCULATION, WITH CREDIT AND DEPARTURES 135 TO 160 MONTHS. I
22 AM NOT GOING TO IMPOSE THE LOW END. IF I TAKE 43 MONTHS OFF
23 OF THE 135, THE LOW END IS DOWN TO THE UPPER 80S. WHAT WAS
24 YOUR RECOMMENDATION?

25 MS. MCGRATH: 78, YOUR HONOR.

1 THE COURT: BUT I AM NOT NECESSARILY ON BOARD WITH
2 THAT. THAT IS THE SIXTH TIME. SHE HAS GOT A DRUG PRIOR IN
3 2007. IT IS A MARIJUANA CASE. I REALIZE THIS. I THINK UNDER
4 3553(A) AFTER I GRANT A DEPARTURE THAT MAY BE IN ORDER.
5 THAT'S WHAT MY THINKING IS.

6 MS. FERRARA: I WOULD ASK FOR YOU TO GO TO 78 AND
7 CONSIDER SOME OF MY RATIONALE JUST TO GET DOWN TO 125 AND TAKE
8 THE 43 OFF.

9 MS. MCGRATH: I AM NOT OPPOSED TO THAT.

10 MS. FERRARA: SINCE THAT I CAN ARGUE DOWN TO THE
11 FACTORS IN THIS CASE. SO I ASK THAT YOU CONSIDER MY ARGUMENT
12 AND TAKE INTO CONSIDERATION THE 5(K) MOTION.

13 THE COURT: I WILL DO THAT. SEEMS TO ME IF SHE
14 CONTINUES TO COOPERATE AND GETS SOME ADDITIONAL TIME OFF. I
15 DON'T WANT TO OVERSTATE IT.

16 MS. MCGRATH: I AM PREPARED TO DO WHAT MS. MADRID IS
17 PREPARED TO DO. IT IS UNDER THE CIRCUMSTANCES OF THAT CASE
18 LIKELY THE ONLY TIME WE WILL BE BEFORE THE COURT.

19 MS. FERRARA: THERE HAS BEEN SOME CONSIDERABLE
20 DANGER TO HER. HER HOUSE HAS BEEN SHOT.

21 THE COURT: SHE SHOULDN'T BE IN THE DRUG CULTURE.

22 (END OF SIDEBAR)

23 THE COURT: I WILL TAKE INTO CONSIDERATION THE
24 INFORMATION THAT KIND OF EXPANDS ON WHAT WAS IN THE
25 DECLARATION THAT WAS JUST PROVIDED AT SIDEBAR.

1 NOW, WITHOUT OTHER INTERRUPTIONS, I AM HAPPY TO HEAR
2 FROM YOU, MS. FERRARA.

3 MS. FERRARA: THANK YOU, YOUR HONOR.

4 YOUR HONOR, I WOULD FIRST LIKE TO POINT OUT THAT
5 MS. MADRID'S TWO DAUGHTERS, VANESSA AND RACHEL, ARE PRESENT IN
6 COURT TO SHOW THEIR SUPPORT FOR THEIR MOTHER.

7 YOUR HONOR, THE PORTRAIT I'D LIKE TO PAINT OF
8 MS. MADRID, APART FROM JUST THE WOMAN WHO SMUGGLED DRUGS INTO
9 THE UNITED STATES SIX OTHER TIMES, IS THE PORTRAIT OF A WOMAN
10 WHO WAS A GOOD MOM, A GOOD, HARD WORKING SINGLE MOM UNTIL
11 ABOUT 10 YEARS AGO, AND HER LIFE COMPLETELY FELL APART.

12 SHE WAS INJURED ON HER JOB. SHE RECEIVED -- SHE
13 WENT ON A CARPAL TUNNEL SURGERY FOR HER HANDS, AND IT WAS
14 BOTCHED. SHE LOST THE USE OF HER RIGHT HAND, AND AS A RESULT
15 OF THAT, SHE WAS UNABLE TO WORK. AND THEN WITHIN A YEAR OR SO
16 OF THAT, SHE DEVELOPED THIS SYNDROME CALLED REFLEX DYSTROPHY
17 SYNDROME. I RESEARCHED IT. I LOOKED IT UP, AND I GAVE YOU
18 SOME OF THE INFORMATION. IT IS AN INCREDIBLE AMOUNT OF PAIN.
19 THERE IS NO CURE. AND IT DOESN'T GET BETTER. IT GETS WORSE
20 OVER TIME.

21 SHE WAS ON A RIDICULOUS AMOUNT OF PAIN KILLERS, A
22 RIDICULOUS AMOUNT OF DRUGS. HER HUSBAND OR HER BOYFRIEND SENT
23 ME A LIST OF THE NARCOTICS THAT SHE WAS TAKING: VICODIN,
24 TRAMADOL, TORADOL, ALPRAZOLAM (PHONETIC). I MEAN, THINGS I
25 CAN'T EVEN PRONOUNCE, BUT CRAZY AMOUNTS OF NARCOTICS TO JUST

1 DULL THE PAIN THAT SHE WAS IN. AND IT'S NOT JUST PAIN IN HER
2 HAND, IT'S PAIN THAT'S IN HER SKIN, IN HER BONES, IN HER
3 JOINTS. SHE JUST -- HER LIFE JUST ENDED AT THAT POINT. SHE
4 WAS JUST IN SO MUCH PAIN. SHE COULDN'T WORK, SHE COULDN'T DO
5 ANYTHING.

6 THEN YOU MOVE ON FROM 2002 WHEN THAT ALL HAPPENED TO
7 2007 WHEN SHE MADE THIS COLOSSALLY STUPID MISTAKE TO ACCOMPANY
8 HER DAUGHTER ON A DRUG SMUGGLING, MARIJUANA SMUGGLING
9 VENTURE.

10 THE COURT: ONE OF THESE DAUGHTERS?

11 MS. FERRARA: NO, NO. AND SHE HAD NEVER BEEN IN
12 TROUBLE BEFORE IN HER LIFE, NOTHING. AND ONE OF HER
13 DAUGHTERS, HER ELDEST DAUGHTER, IS UNFORTUNATELY A DRUG
14 ADDICT, HAS HAD PROBLEMS FOR MANY YEARS. IN A MISGUIDED SENSE
15 OF PROTECTION FOR HER DAUGHTER, SHE WAS A PASSENGER IN A
16 VEHICLE, AND SHE AGREED TO DO IT, AND SHE THOUGHT SHE COULD --
17 I DON'T KNOW -- HELP PROTECT HER KID. IT WAS STUPID AND THAT
18 WAS SOMETHING THAT HAS RUINED HER LIFE EVEN MORE, BECAUSE NOW
19 WE STAND HERE AND YOU CAN'T GIVE HER LESS THAN 10 YEARS BUT
20 FOR THE GOVERNMENT'S MOTION.

21 I THINK THAT BUT FOR THAT, YOU MIGHT LOOK AT HER A
22 LITTLE BIT DIFFERENTLY, BECAUSE THEN YOU COULD CONSIDER ALL
23 THESE 3553(A) FACTORS, BECAUSE THIS IS NOT A BAD WOMAN. SHE
24 HAS MADE HORRIBLE MISTAKES.

25 THE COURT: IT'S CONFOUNDING TO ME THAT HAVING DONE

1 88 DAYS FOR DRUG SMUGGLING IN THE STATE SYSTEM IN 2007 THAT
2 SHE WOULD BLUNDER BACK INTO THIS AGAIN, AND IN SPADES, NOT
3 MARIJUANA, NOT A PASSENGER, BUT DRIVING A CAR WITH A VERY
4 ADDICTIVE AND VERY LARGE AMOUNT OF METHAMPHETAMINE AND
5 COCAINE. I WOULD HAVE THOUGHT THAT -- SHE WAS 46 AT THE TIME
6 OF THE EARLIER ONE. SHE IS 51 NOW. I WOULD HAVE THOUGHT SHE
7 WOULD HAVE LEARNED HER LESSON FROM THAT.

8 MY EXPERIENCE, BY HUMAN NATURE AND MATURING IS THAT
9 AS YOU GET OLDER, YOU LEARN FROM MISTAKES AND YOU DON'T REPEAT
10 THEM. SOMETIMES THAT'S NOT TRUE WITH YOUNGER PEOPLE, AND I
11 GET THAT. I ADJUST APPROPRIATELY WITH YOUNG PEOPLE, BUT MY
12 GOODNESS. BY THE TIME YOU ARE 46 AND YOU HAVE RAISED A FAMILY
13 AND YOU HAD A BAD EXPERIENCE LIKE THE ONE SHE WENT THROUGH IN
14 2007, I WOULD THINK YOU WOULD SAY NO MORE. I AM NOT GOING TO
15 GET ANYWHERE NEAR THAT AGAIN, BECAUSE I DIDN'T LIKE BEING IN
16 JAIL FOR 88 DAYS OR EVEN 44 DAYS IF IT WAS HALF TIME THAT SHE
17 DID.

18 MS. FERRARA: IF MS. MADRID WAS CLEAR HEADED AND NOT
19 SUFFERING FROM PROBLEMS THAT YOU AND I ARE NOT SUFFERING FROM,
20 I WOULD AGREE WITH YOU, YOUR HONOR. BUT IN THE FIVE YEARS
21 SINCE THAT TIME OR THE FOUR YEARS SINCE THAT TIME, HER PAIN
22 INCREASED TO THE POINT WHERE HER FAMILY WAS CONCERNED ABOUT
23 HER MENTAL HEALTH, HER HUSBAND WAS CONCERNED. HE WANTED HER
24 TO GO -- THEY ALL WANTED HER TO GO TO DETOX BECAUSE THEY WERE
25 JUST CONCERNED THAT SHE WAS IN A FOG ALL THE TIME. SHE WAS

1 NOT THINKING CLEARLY. AND THAT'S A COMBINATION OF ABUSING THE
2 PRESCRIPTION MEDS AND A COMBINATION OF JUST PAIN AND THE
3 SELF-WORTH AND EVERYTHING THAT HAD GOTTEN HER TO THE POINT IN
4 2011 WHERE SHE JUST -- I DON'T THINK SHE WAS THE SAME PERSON
5 THAT MADE THE DECISION IN 2007. SHE CERTAINLY WASN'T THE SAME
6 PERSON THAT THESE YOUNG WOMEN KNEW IN 2001 AND 2002.

7 AND SO IF SHE WAS THAT PERSON, YOUR HONOR, I THINK
8 YOU HAVE EVERY RIGHT TO SAY WHY DIDN'T SHE LEARN? WHAT ON
9 EARTH WOULD MAKE HER DO THAT AGAIN? WELL, A LOT OF THINGS
10 MADE HER DO THAT AGAIN, AND A LOT OF THINGS MADE HER NOT
11 COMPREHEND WHAT RISK SHE WAS LOOKING AT. IT CERTAINLY DIDN'T
12 ENTER INTO HER MIND THAT IF SHE GOT CAUGHT THAT SHE'D BE
13 LOOKING AT 10 YEARS.

14 THE COURT: DID SHE COLLECT DISABILITY BECAUSE OF
15 HER CARPAL TUNNEL?

16 MS. FERRARA: YES, SHE GOT DISABILITY AND SSI.

17 THE COURT: IT'S ACTUALLY LIKE A LIVE-IN BOYFRIEND,
18 NOT LEGALLY MARRIED?

19 MS. FERRARA: COMMON LAW, RIGHT.

20 THE COURT: COMMON LAW. WAS HE EMPLOYED?

21 MS. FERRARA: HE IS EMPLOYED, BUT AS I SAID IN MY
22 PAPERS, THE THIRD KIND OF NAIL IN THE COFFIN WAS WHEN HE GOT
23 DEPORTED IN 2008. HE WAS HERE ON AN EXPIRED VISA. HE GOT
24 DEPORTED, AND SO IN THAT TIME PERIOD WAS WHEN MS. MADRID
25 STARTED LIVING BETWEEN U.S. AND MEXICO AND WHEN SHE MET THE

1 PEOPLE IN MEXICO AND THINGS JUST KIND OF SPIRALED OUT OF
2 CONTROL.

3 THE COURT: WERE YOU LIVING IN MEXICO AT THE TIME OF
4 THIS ACTIVITY?

5 THE DEFENDANT: YES.

6 THE COURT: ANYTHING ELSE, MS. FERRARA?

7 MS. FERRARA: NO, YOUR HONOR. I JUST ASK THAT THE
8 STARTING POINT BASED ON OUR CONVERSATION FOR YOU AS TO THE 5K
9 MOTION SHOULD BE 120. I THINK THAT IS APPROPRIATE. I
10 CERTAINLY WOULD ASK FOR A LOWER SENTENCE, BECAUSE I THINK
11 MS. MADRID IS DESERVING OF IT. I WOULD ASK THAT YOU START AT
12 120.

13 THE COURT: THANK YOU, MS. FERRARA.

14 MS. MADRID, I AM HAPPY TO HEAR FROM YOU.

15 THE DEFENDANT: WELL, YOUR HONOR, I AM SORRY THAT I
16 MESSED UP. THAT IS MY FAMILY ALSO.

17 THE COURT: YES, I AM VERY SURPRISED. I TAKE INTO
18 CONSIDERATION WHAT YOUR LAWYER SAID. YOU WEREN'T THINKING
19 CLEARLY AND HAD A LOT OF MEDICATION. YOU HAVE THOSE WONDERFUL
20 DAUGHTERS OUT HERE. LOOK BEHIND YOU NOW. THEY ARE GRIEVING
21 BECAUSE THERE IS NOTHING THEY CAN DO TO HELP YOU NOW, AND THEY
22 FEEL BAD THAT YOU ARE IN THIS POSITION. THAT'S TERRIBLE.

23 IT'S A TERRIBLE SITUATION FOR EVERYONE. I DON'T
24 TAKE ANY DELIGHT IN THIS, BUT YOU SHOULD KNOW BETTER. YOU
25 SHOULD. YOU WERE OLD ENOUGH TO KNOW BETTER, AND HAVING GONE

1 THROUGH AN EXPERIENCE LIKE THIS BEFORE, YOU SHOULD HAVE KNOWN
2 BETTER THAN TO GET BACK INVOLVED IN THIS. I AM HEARING NOW
3 THAT YOU HAD SSI, YOU HAD SOME DISABILITY, SO YOU WEREN'T
4 DESTITUTE, AND YOU WERE LIVING IN MEXICO. I AM NOT SURE I
5 UNDERSTAND --

6 THE DEFENDANT: I WENT BACK AND FORTH WITH MY
7 KIDS.

8 THE COURT: YES, BUT I MEAN, IT WASN'T -- I HEAR
9 PEOPLE FROM TIME TO TIME TO TELL ME -- AND I DON'T ACCEPT THIS
10 VERY OFTEN -- THEY SAY THIS WAS THE ONLY OPTION FOR ME TO DO
11 THIS BECAUSE I COULDN'T GET A JOB.

12 ONCE IN A WHILE SOMEBODY HAS A FAMILY MEMBER THAT'S
13 GOT CANCER AND THEY ARE DESPERATE OR SOMETHING LIKE THAT, THEN
14 MAYBE I CAN UNDERSTAND THE BAD JUDGMENT. MOST OF THE REST OF
15 THE TIME I THINK YOU COULD HAVE FOUND A JOB SOMEWHERE. YOU
16 COULD BEAT THE BUSHES AND FOUND SOMETHING, BUT THAT DOESN'T
17 EVEN CHARACTERIZE YOUR SITUATION BECAUSE YOU HAD INCOME COMING
18 IN. I KNOW IT'S LESS EXPENSIVE TO LIVE IN TIJUANA WHERE YOU
19 WERE LIVING OR EVEN BACK AND FORTH, BUT THAT DOESN'T SOUND
20 LIKE THIS WAS --

21 THE DEFENDANT: IT WAS FOR MY HUSBAND AND FOR MY
22 DAUGHTER. I WAS TRYING TO HELP MY DAUGHTER AND MY HUSBAND.

23 THE COURT: HOW SO? WHAT WERE YOU GOING TO DO WITH
24 THE MONEY?

25 THE DEFENDANT: TO GET HIS GREEN CARD BACK.

1 MS. FERRARA: SHE WAS SAVING UP SO SHE COULD HIRE A
2 LAWYER AND TRY TO HELP HIM GET HIS GREEN CARD BACK.

3 THE COURT: BUT THIS SITUATION, IT WAS JUST AN
4 EXPIRED GREEN CARD? HE DIDN'T GET THROWN OUT FOR ANOTHER
5 REASON?

6 MS. FERRARA: I DON'T KNOW THE EXACT DETAILS, BUT
7 WHAT THEY TOLD ME IS THAT HE HAD AN EXPIRED GREEN CARD.

8 THE COURT: HE HADN'T BEEN CONVICTED OF ANY OTHER
9 CRIME?

10 THE DEFENDANT: NO.

11 THE COURT: WELL, OKAY. I AM NOT SURE I GET THAT,
12 BECAUSE I AM NOT SAYING IT'S SIMPLE, BUT IT'S NOT DIFFICULT.
13 IT'S NOT LIKE YOU GOT TO GO THROUGH A LOT OF HOOPS BECAUSE A
14 PERSON HAS BEEN CONVICTED AND INS IS GOING TO LOOK BEYOND THE
15 SKY AT THE PERSON.

16 THE DEFENDANT: HE HAD TO STAY OUT FOR 10 YEARS.

17 THE COURT: BECAUSE IT EXPIRED AND HE REMAINED
18 AFTERWARDS?

19 MS. FERRARA: HE NEEDED TO RAISE A COUPLE THOUSAND
20 DOLLARS.

21 THE COURT: HOW MUCH WERE YOU GETTING PAID FOR EACH
22 TRIP?

23 THE DEFENDANT: DEPENDS.

24 THE COURT: HOW ABOUT THE FIRST SIX TIMES, HOW MUCH
25 DID YOU GET?

1 THE DEFENDANT: WELL, IT WAS \$2,500.

2 THE COURT: SO AFTER THE FIRST TRIP THERE IS PLENTY
3 OF MONEY TO GET THE LAWYER AND GET THE GREEN CARD.

4 LOOK, I AM TRYING TO BE FAIR ABOUT THIS. THIS ISN'T
5 JUST LIKE I ACCEPT EVERYTHING THAT'S SAID. THAT'S SIX TRIPS,
6 WHAT IS THAT -- 13-, 14,000?

7 ANYWAY, MS. MSGRATH.

8 MS. MCGRATH: YOUR HONOR, UNLESS THE COURT HAS ANY
9 QUESTIONS, I'LL SUBMIT ON THE PAPERS AND WHAT WAS SAID AT
10 SIDEBAR.

11 THE COURT: THE COURT HAS TO CORRECTLY CALCULATE THE
12 GUIDELINES. THAT IS THE STARTING POINT IN DETERMINING WHAT
13 THE APPROPRIATE SENTENCE IS.

14 HERE I FIND THAT THE BASE OFFENSE LEVEL, BASED ON
15 THE AMOUNT OF NARCOTICS AND AGREED TO BY THE PARTIES, IS A 38.
16 TWO POINTS ARE ADDED BECAUSE THE BULK OF THE NARCOTICS IN THIS
17 CASE WAS METHAMPHETAMINE. AND PURSUANT TO 2D1.1(B)(5), TWO
18 LEVEL INCREASE IS APPLIED.

19 I DISAGREE WITH THE GOVERNMENT. I DON'T FIND THAT
20 THAT'S A DISCRETIONARY GUIDELINE PROVISION WHERE THEY CAN
21 DECIDE TO BRING IT OR NOT. THE PROPER CALCULATION OF THE
22 GUIDELINES RECOGNIZES THAT THE SENTENCING COMMISSION HAS
23 DETERMINED TWO LEVELS ARE ADDED WHEN THE SUBSTANCE IS
24 METHAMPHETAMINE. THAT'S NOT DISCRETIONARY.

25 AS I SAID, IT'S NO DIFFERENT FROM THE GOVERNMENT

1 SAYING, WE DISAGREE, IT'S A 38. WE CALL IT A 31. I DON'T
2 THINK YOU GET TO DO THAT EITHER. IT'S BEEN AN INCORRECT
3 APPLICATION OF THE GUIDELINES NOT TO APPLY THAT. THAT'S MY
4 FINDING.

5 SO THE STARTING OFFENSE LEVEL UPWARD IS 40. THREE
6 POINTS COME OFF FOR ACCEPTANCE. I GRANT THE FOUR-POINT
7 DEPARTURE FOR FAST TRACK WHICH DROPS THIS DOWN TO A 33.

8 AND THE GUIDELINE RANGE IS 135 TO 168 MONTHS.
9 MS. FERRARA HAS ASKED ME TO CONSIDER ADDITIONAL BASES FOR
10 DEPARTURE, AND SHE HAS ADVOCATED THOSE IN HER SENTENCING
11 MEMORANDUM. HER EFFORT IS TO GET THIS DOWN TO THE MANDATORY
12 MINIMUM BEFORE I CONSIDER THE ADDITIONAL DEPARTURE RECOMMENDED
13 BY THE GOVERNMENT UNDER 5K.

14 I HAVE LOOKED AT THOSE BASES FOR DEPARTURE, AND I
15 FIND THAT THEY ARE EITHER SUBSUMED WITHIN THE FOUR POINTS THAT
16 I HAVE TAKEN OFF FOR FAST TRACK OR THEY ARE SUBSUMED WITHIN
17 THE 5K. SO I DECLINE TO DO THAT.

18 THE GOVERNMENT HAS RECOMMENDED A 43-MONTH
19 ADJUSTMENT. AND FOR THE REASONS GIVEN BY MS. MCGRATH, I FIND
20 THAT THAT IS APPROPRIATE AND I GRANT IT.

21 MS. FERRARA HAS ASKED ME TO CONSIDER GIVING
22 ADDITIONAL CREDIT, BUT I AM RELUCTANT TO DO THAT, AND I FIND I
23 DON'T HAVE A BASIS FOR DOING IT HERE. AS I SAID, I RESPECT
24 MS. MCGRATH. I RESPECT HER EXPERIENCE. SHE HAS GIVEN ME
25 COGENT REASONS WHY 43 MONTHS ARE APPROPRIATE FOR THE

1 COOPERATION PROVIDED BY MS. MADRID. BUT I DON'T FIND THAT I
2 HAVE A BASIS FOR GOING BEYOND THAT.

3 SO WHEN I TAKE THE 43 MONTHS OFF, I AM AT 92 MONTHS.

4 THE PROBATION OFFICER: YOUR HONOR?

5 THE COURT: YES.

6 THE PROBATION OFFICER: I THINK IF THE GUIDELINE
7 CALCULATION IS CATEGORY II, SHE IS 151 TO 188 MONTHS IN
8 CATEGORY II.

9 THE COURT: OH, YES, I AM SORRY. I GOT THE WRONG
10 CATEGORY THEN.

11 YES, YOU ARE RIGHT. I APOLOGIZE. I WAS LOOKING AT
12 CATEGORY I, 151 TO 188. TAKING THE 43 FROM THE LOW END WOULD
13 PUT ME AT 108. IS THAT WHAT YOU HAVE?

14 THE PROBATION OFFICER: YES, YOUR HONOR.

15 THE COURT: FOR PURPOSES OF THE GUIDELINES.

16 MS. FERRARA: YOUR HONOR, CONSIDERING THAT
17 DIFFERENCE, WOULD YOU RECONSIDER MY FACTORS FOR DEPARTURE OR
18 3553(A) FACTORS? 108 MONTHS IS AN INCREDIBLE AMOUNT OF TIME
19 FOR THIS WOMAN, YOUR HONOR. SHE HAS DONE EVERYTHING THAT SHE
20 CAN TO TRY TO WORK WITH THE GOVERNMENT. WALKING IN, WE ARE
21 TALKING ABOUT 78 MONTHS, AND NOW WE ARE TALKING ABOUT 108. I
22 UNDERSTAND WHERE YOU ARE COMING FROM, BUT 108 MONTHS IS SO, SO
23 MUCH, YOUR HONOR.

24 THE COURT: IT'S A LONG TIME. I GRANT YOU THAT.
25 IT'S DRIVEN IN PART BECAUSE SHE HAS GOT THIS PRIOR DRUG

1 OFFENSE FOR SMUGGLING DRUGS THROUGH THE SAME PORT OF ENTRY.

2 MS. FERRARA: I UNDERSTAND WHAT YOU ARE SAYING ARE
3 AGGRAVATING FACTORS, BUT THERE ARE CERTAINLY SOME MITIGATING
4 FACTORS IN THIS CASE. SHE IS SO MUCH DESERVING OF SOMETHING
5 LESS THAN 108 MONTHS.

6 THE COURT: HERE IS WHAT I'LL DO. I'LL RECONSIDER
7 THE ARGUMENTS THAT YOU HAVE MADE, MS. FERRARA.

8 I FIND IN ADDITION TO THE FAST TRACK AND THE 5K THAT
9 ADDITIONAL DEPARTURE OF 15 MONTHS ACCOUNTS FOR THE OTHER
10 FACTORS, DEPENDENCY ON DRUGS, ALTHOUGH IT'S ARGUABLE THAT
11 THAT'S NOT A MITIGATING FACTOR.

12 UNDER THE CIRCUMSTANCES OF THIS CASE, I'LL ACCEPT
13 THAT YOU SAID IT IMPAIRED HER JUDGMENT. SO I'D END UP AT 93
14 MONTHS. AN ADDITIONAL 15 MONTHS, I THINK, ACCOUNTS FOR THE
15 OTHER THINGS THAT YOU HAVE MENTIONED.

16 SO I GRANT THE DEPARTURE THAT YOU ASKED FOR TO THAT
17 EXTENT, TAKE INTO CONSIDERATION THE RESIDUAL FACTORS THAT YOU
18 HAVE MENTIONED IN YOUR MEMO AND YOU HIGHLIGHTED IN YOUR
19 ARGUMENT TODAY. 93 MONTHS. THAT'S THE -- WHAT I FIND TO BE
20 THE GUIDELINE.

21 NOW, I CHECKED WITH BOTH OF YOU, AND I THINK
22 MS. FERRARA ACKNOWLEDGED TO HER CREDIT THAT THE WAY THIS IS
23 SUPPOSED TO WORK IS THAT ONCE I HAVE REACHED THE BOTTOM POINT
24 IN APPLYING THE 5K THAT I ONLY LOOK TO THE 3553 FACTORS TO
25 DETERMINE WHETHER I SHOULD GO UP.

1 I HAVE REVIEWED ALL OF THOSE FACTORS. THIS IS A
2 SERIOUS OFFENSE. THE PENALTIES BESPEAK THE SERIOUSNESS OF IT.
3 IT'S AGGRAVATED THAT SHE DID IT MULTIPLE TIMES. IT'S
4 AGGRAVATED THAT SHE HAS HAD A SIMILAR EXPERIENCE WITH THE DRUG
5 OFFENSE BEFORE.

6 NOT WITHSTANDING ALL OF THAT, I THINK THAT THE
7 SENTENCE OF 93 MONTHS IS SUFFICIENT BUT NOT GREATER THAN
8 NECESSARY TO ACCOUNT FOR THOSE AGGRAVATORS. SO I DON'T FIND
9 ANY BASIS FOR GOING BACK UP FROM WHAT I FIND TO BE THE LOWEST
10 GUIDELINE LEVEL.

11 THE COURT DETERMINES THAT 93 MONTHS IS THE
12 APPROPRIATE SENTENCE IN THIS CASE.

13 THAT'S TO BE FOLLOWED BY FIVE YEARS OF SUPERVISED
14 RELEASE. HERE ARE THE CONDITIONS, MS. MADRID, OF SUPERVISED
15 RELEASE.

16 YOU ARE NOT TO GO INTO MEXICO. AND YOU DON'T HAVE
17 ANY REASON TO GO BACK THERE; RIGHT? YOUR DAUGHTERS ARE HERE,
18 YOU CAN LIVE HERE IN THE UNITED STATES.

19 THE DEFENDANT: MY HUSBAND IS THERE.

20 THE COURT: WELL --

21 MS. FERRARA: CAN IT BE WITH PERMISSION OF
22 PROBATION?

23 THE COURT: WITH PERMISSION OF THE PROBATION
24 OFFICER, BUT I DON'T THINK IT SHOULD BE FOR MORE THAN 48 HOURS
25 AT A TIME.

1 LOOK, THE CIRCUMSTANCES HERE ARE THAT SHE SAYS,
2 WELL, WHILE I WAS IN MEXICO THAT I GOT IMPORTUNED TO DO THIS.
3 I WAS AROUND BAD INFLUENCES, AND THEY ARE THE ONES THAT PUT ME
4 UP TO THIS. YOU ARE SHAKING YOUR HEAD NO, BUT THAT'S WHAT WAS
5 REPRESENTED TO ME THAT WHILE YOU WERE DOWN THERE, SOMEBODY
6 APPROACHED YOU AND SAID DO THESE THINGS.

7 I'LL GIVE THE PROBATION OFFICER DISCRETION UP TO 48
8 HOURS. AND IT COULD BE THAT YOU'LL HAVE HIS SITUATION
9 STRAIGHTENED OUT AND BE ABLE TO COME BACK OVER HERE BY THE
10 TIME YOU GET OUT, SO MAYBE IT IS NOT GOING TO BE A PROBLEM.

11 I THINK IT'S A PROBLEM IF YOU ARE RESIDING IN
12 MEXICO, BECAUSE YOU ARE SUBJECT TO THE SAME TEMPTATIONS AND
13 PRESSURES THAT HAVE YOU HERE IN FRONT OF ME TODAY.

14 SHE IS TO PARTICIPATE IN A PROGRAM OF MENTAL HEALTH
15 TREATMENT INCLUDING TAKING ALL MEDICATIONS THAT ARE
16 PRESCRIBED.

17 SHE IS TO TELL THE PROBATION OFFICER ABOUT ALL
18 AUTOMOBILES SHE OPERATES OR HAS AN INTEREST IN; SHE MUST
19 SUBMIT TO A SEARCH OF HER HOUSE AND HER CAR AND HER PERSON BY
20 THE U.S. PROBATION OFFICER OR AT THE REQUEST OF ANY PEACE
21 OFFICER: STATE, FEDERAL, OR LOCAL.

22 I FIND THAT ADDITIONAL RESTRICTION ON HER FOURTH
23 AMENDMENT PROTECTION IS WARRANTED IN LIGHT OF THE FACT THAT
24 SHE HAS NOW BEEN TWICE CONVICTED OF DRUG SMUGGLING.

25 SO THE PERIOD OF SUPERVISION IS FIVE YEARS. THE

1 DEFENDANT HAS PLED TO TWO COUNTS HERE; CORRECT?

2 MS. MCGRATH: THAT'S CORRECT, YOUR HONOR.

3 THE COURT: SENTENCE WILL RUN CONCURRENTLY AS TO
4 EACH COUNT WITH THE EXCEPTION OF THE PENALTY ASSESSMENTS WHICH
5 ARE FIVE CONSECUTIVE. PAY \$200 IN PENALTY ASSESSMENTS BUT NO
6 FINE.

7 I THINK -- I AM NOT SURE, BUT I THINK THAT THE
8 SENTENCE THAT I HAVE IMPOSED TRIGGERS A WAIVER OF ANY RIGHT TO
9 APPEAL. WHAT WAS YOUR --

10 MS. MCGRATH: IT DOES, YOUR HONOR.

11 THE COURT: WHAT WAS YOUR RANGE, 78 TO WHAT?

12 MS. MCGRATH: WELL, YOUR HONOR, THE INITIAL RANGE
13 WITHOUT A 5K, IT CERTAINLY TRIGGERS UNDER THAT. BUT MY RANGE
14 WITH THE 5K RECOMMENDATION WAS 78 TO 97.

15 THE COURT: EITHER WAY, IT'S WITHIN THE RANGE. YOU
16 AGREE WITH THAT FINDING THAT THERE IS NO RIGHT TO APPEAL OR TO
17 COLLATERALLY ATTACK THE COURT'S JUDGMENT IN THE FUTURE?

18 MS. FERRARA: YES, YOUR HONOR.

19 THE COURT: GOOD LUCK, MS. MADRID. NO MORE PROBLEMS
20 LIKE THIS NOW.

21 MS. FERRARA: YOUR HONOR, WILL YOU RECOMMEND THE
22 500-HOUR DRUG TREATMENT PROGRAM?

23 THE COURT: YES, I WOULD. IN LIGHT OF THE EVIDENCE
24 THAT HAS BEEN PRESENTED THAT SHE HAD AN ADDICTION TO OXYCODON
25 OR VICODIN, I GUESS.

1 MS. FERRARA: AND WOULD YOU ALSO RECOMMEND THE
2 WESTERN REGION?

3 THE COURT: I WILL. I RECOMMEND PLACEMENT IN THE
4 WESTERN REGION.

5 DID MS. FERRARA TALK TO YOU ABOUT THIS 500-HOUR DRUG
6 TREATMENT PROGRAM? THAT SHAVES A YEAR OFF THE SENTENCE, SO
7 YOU SHOULD DO THAT.

8 THE PROBATION OFFICER: YOUR HONOR, WOULD THE COURT
9 CONSIDER DRUG COUNSELING? I DON'T THINK IT WAS RECOMMENDED
10 BEFORE.

11 THE COURT: YOU ARE RIGHT. I'LL ADD THAT AS A
12 CONDITION OF SUPERVISED RELEASE THAT SHE BE SUBJECT TO DRUG
13 COUNSELING AND DRUG TESTING FOR THE FIRST YEAR. THREE TIMES
14 PER MONTH FOR THE FIRST YEAR. DON'T MISS DRUG TESTS AND DON'T
15 USE ANY ILLEGAL DRUGS OR DRUGS THAT ARE PRESCRIPTION DRUGS
16 THAT YOU DON'T HAVE A PRESCRIPTION FOR. IF YOU ARE ON
17 SUPERVISED RELEASE, YOU DON'T GET TO USE ILLICIT DRUGS. DON'T
18 DO THAT. GOOD LUCK.

19 --000--

20
21 I HEREBY CERTIFY THAT THE TESTIMONY
22 ADDUCED IN THE FOREGOING MATTER IS
23 A TRUE RECORD OF SAID PROCEEDINGS.

24 S/EVA OEMICK 1-19-2016
25